

AMENDED IN SENATE MAY 15, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 777

Introduced by Senator Calderon

February 22, 2013

An act to amend Sections 12556, 12726, ~~25147.7~~ 25174.7, and 25205.3 of, to add Sections 12599.5 and 12635.5 to, and to add Chapter 3.5 (commencing with Section 12559) to Part 2 of Division 11 of, the Health and Safety Code, and to amend Section 15301 of the Vehicle Code, relating to public safety, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 777, as amended, Calderon. Public safety: fireworks.

Existing law authorizes the retail sale of safe and sane fireworks from June 28 to July 6, annually, pursuant to a license issued by the State Fire Marshal, unless otherwise prohibited or regulated by law or ordinance. Existing law requires various entities, including the State Fire Marshal, to seize certain prohibited fireworks. Existing law requires an authority that seizes fireworks to notify the State Fire Marshal of the seizure and provide specified information. Existing law requires the State Fire Marshal to dispose of the fireworks and requires dangerous fireworks to be disposed of according to specified procedures. Existing law requires the State Fire Marshal to acquire and use statewide mobile dangerous fireworks destruction units to collect and destroy dangerous fireworks from local and state agencies.

This bill would require the State Fire Marshal, by January 1, 2015, to establish and have operational regional collection centers for the purpose of receiving seized safe and sane and federally approved fireworks. The bill would authorize the State Fire Marshal to permit a state licensed fireworks importer and exporter or wholesaler to purchase any fireworks the State Fire Marshal, *the Department of Toxic Substances Control*, and a recognized ~~3rd-party~~ *3rd-party* testing entity, as defined, ~~deems~~ *deem* to be commercially viable, ~~from the State Fire Marshal~~. The bill would require revenue generated from the sale of fireworks seized by a local authority to be allocated by the State Fire Marshal to the seizing local authority pursuant to an agreement, as provided, thereby making an appropriation. The bill would require the fireworks stored at the regional collection facility to be subject to certain requirements, including that they be stored for a period of not more than 90 days. *The bill would require the Department of Toxic Substances Control to develop and publish guidelines for the implementation of these provisions, as provided.*

This bill would authorize, beginning January 1, 2015, the sale of certified safe and sane fireworks from 9 a.m. on December 26 to 11:59 p.m. on January 1 of the following year pursuant to a license issued by the State Fire Marshal, if authorized by a charter city, city, county, fire protection district, or city and county ordinance or resolution that may also restrict the hours of use of those fireworks. Since a violation of this provision or other existing related provisions in connection with the sale of those fireworks would be a misdemeanor, the bill would impose a state-mandated local program by creating new crimes.

The bill would also authorize a charter city, city, county, fire protection district, or city and county that adopts an ordinance or resolution authorizing the sale of safe and sane fireworks to require each applicant receiving a permit to pay a fee to the charter city, city, county, fire protection district, or city and county of a pro rata portion of the actual and reasonable costs incurred by the charter city, city, county, fire protection district, or city and county for, among other things, processing and issuing fireworks permits, inspection of fireworks stands, public awareness and education campaigns regarding the safe and responsible use of safe and sane fireworks, and related fire operation and suppression efforts, as specified. The bill would specify that the pro rata portion of those costs shall be based on a percentage of the permittee's sales and use tax return for the applicable permit period, not to exceed 7% of the gross sales of the fireworks sold in the charter

city, city, county, fire protection district, or city and county, except that a cost recovery ordinance or resolution in effect on or before January 1, 2015, would be authorized to supersede that provision.

Existing law provides that if dangerous fireworks are seized pursuant to a local ordinance that provides for administrative fines or penalties and these fines or penalties are collected, the local government entity collecting the fines or penalties shall forward 65% of the collected moneys to the Controller for deposit in the State Fire Marshal Fireworks Enforcement and Disposal Fund.

This bill would delete this provision.

Existing law imposes various fees and charges upon the management of hazardous waste, which money is deposited in the Hazardous Waste Control Account in the General Fund and is available, upon appropriation by the Legislature, for, among other things, hazardous waste management. These fees and charges are generally not applicable to hazardous wastes generated or disposed of by public agencies or as part of a public program, or to hazardous waste management facilities that are affiliated with a public agency or public program, as specified.

This bill would include within the list of hazardous wastes and facilities that are not subject to the above fees and charges (1) hazardous waste that results from the seizure or destruction of illegal fireworks by the State Fire Marshal or other authorized government fire protection agency, (2) a mobile fireworks treatment unit used by the State Fire Marshal to destroy illegal fireworks, and (3) a regional fireworks collection center established by the State Fire Marshal.

The bill would require, not later than January 1, 2015, the State Fire Marshal to collect and analyze data relating to fires, damages, seizures, arrests, administrative citations, and fireworks disposal issues caused by the sale and use of both dangerous illegal fireworks and safe and sane fireworks, as provided.

Existing law requires the Department of Motor Vehicles to suspend the commercial license of a person transporting dangerous fireworks, as specified.

This bill would clarify that those provisions do not apply to a person with a valid license under the State Fireworks Law, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 12556 of the Health and Safety Code is amended to read:

12556. (a) In addition to the obligations described in Section 13110.5, on or before July 1, 2008, the State Fire Marshal shall identify and evaluate methods to capture more detailed data relating to fires, damages, and injuries caused by both dangerous fireworks and safe and sane fireworks. These evaluation methods shall include a cost analysis related to capturing and reporting the data and shall meet or exceed the specificity, detail, and reliability of the data captured under the former California Fire Incident Reporting System (CFIRS). The State Fire Marshal shall furnish a copy of these evaluation methods to any interested person upon request.

(b) Not later than January 1, 2015, the State Fire Marshal shall collect and analyze data relating to fires, damages, seizures, arrests, administrative citations, and fireworks disposal issues caused by the sale and use of both dangerous illegal fireworks and safe and sane fireworks. The State Fire Marshal shall collect data pursuant to a methodology developed in consultation with the State Fire Marshal's General Fireworks Advisory Committee, which consists of representatives from local fire service and law enforcement agencies and the fireworks industry.

SEC. 2. Chapter 3.5 (commencing with Section 12559) is added to Part 2 of Division 11 of the Health and Safety Code, to read:

CHAPTER 3.5. FIREWORKS SELL-BACK PROGRAM

12559. (a) By January 1, 2015, the State Fire Marshal shall establish and have operational regional collection centers for purposes of receiving safe and sane fireworks and federally approved consumer fireworks seized by local authorities.

(b) The regional collection centers shall be located throughout the state in an amount and in locations determined by the State Fire Marshal.

1 12559.1. (a) Notwithstanding ~~any other law, including Sections~~
2 ~~Section 12723 and, and upon compliance with Section 12726,~~ a
3 local authority or the State Fire Marshal may transfer seized safe
4 and sane fireworks and federally approved fireworks to a regional
5 collection center.

6 (b) ~~Notwithstanding any other law, safe~~ Safe and sane or
7 federally approved fireworks transferred to a regional collection
8 center shall be deemed “hazardous material” until the State Fire
9 Marshal, *Department of Toxic Substances Control*, and a
10 recognized ~~third party~~ *third-party* testing entity make the
11 determination pursuant to subdivision (c).

12 (c) (1) The State Fire Marshal is authorized to permit a
13 recognized ~~third party~~ *third-party* testing entity to enter the regional
14 collection center for purposes of making a determination with the
15 State Fire Marshal ~~and the Department of Toxic Substances Control~~
16 as to whether any seized fireworks are either commercially viable
17 or hazardous waste.

18 (2) Any firework deemed commercially viable may be
19 repackaged by the State Fire Marshal or the Marshal’s designee,
20 including, but not limited to, a state licensed fireworks importer
21 and exporter, a wholesaler purchasing the product pursuant to
22 subdivision (d), the recognized ~~third party~~ *third-party* testing
23 authority, or a licensed hazardous materials or hazardous waste
24 hauler.

25 (3) Any product deemed not commercially viable by the State
26 Fire Marshal, *the Department of Toxic Substances Control*, and
27 the ~~third party~~ *third-party* testing authority shall be removed from
28 the regional collection center by the State Fire Marshal or the State
29 Marshal’s designee and transported and disposed of within 72
30 hours of the determination in accordance with ~~Article 6~~
31 ~~(commencing with Section 25160) of Chapter 6.5 of Division 20~~
32 ~~of, Article 6.5 (commencing with Section 25167.1) of Chapter 6.5~~
33 ~~of Division 20 of, this code, and Chapter 51 (commencing with~~
34 ~~Section 5101) of Title 49 of, the United States Code, and any other~~
35 ~~state and federal law or regulation relating to the transportation~~
36 ~~and disposal of hazardous waste. all federal and state hazardous~~
37 ~~waste laws and regulations.~~

38 (d) (1) The State Fire Marshal shall authorize a state licensed
39 fireworks importer and exporter or wholesaler to purchase any

1 fireworks deemed to be commercially viable pursuant to
2 subdivision (c) *from the State Fire Marshal*.

3 (2) The State Fire Marshal may enter into an agreement with a
4 local authority for purposes of allocating revenue from the sale of
5 fireworks pursuant to paragraph (1). Notwithstanding Section
6 12635, revenue generated from the sale of the safe and sane or
7 federally approved fireworks seized by a local authority shall be
8 allocated by the State Fire Marshal to the seizing local authority
9 pursuant to the agreement. The State Fire Marshal shall allocate
10 no less than 65 percent of the revenues to that local authority.

11 (e) For purposes of this section, “~~recognized third-party~~
12 *third-party testing entity*” means an independent third-party testing
13 entity recognized by the federal Consumer Product Safety
14 Commission as an acceptable testing entity for consumer fireworks.

15 (f) *Upon the purchase of fireworks, pursuant to this chapter, a*
16 *state-licensed fireworks importer and exporter or wholesaler shall*
17 *accept full liability for any damage done by the fireworks and the*
18 *State of California shall be indemnified.*

19 12559.2. Any fireworks stored at a regional collection center
20 shall be subject to the requirements of Article 8 (commencing with
21 Section 989) of Chapter 6 of Title 19 of the California Code of
22 Regulations and to the requirements of the National Fire Protection
23 Association (NFPA) 1124: Code for the Manufacture,
24 Transportation, Storage, and Retail Sales of Fireworks and
25 Pyrotechnic Articles of 2013, and may be stored for a period not
26 to exceed 90 days. The regional collection centers shall not be
27 considered a storage facility for purposes of subdivision (b) of
28 Section 25123.3.

29 12559.3. (a) The State Fire Marshal *and the Department of*
30 *Toxic Substances Control* shall train local fire and law enforcement
31 personnel on the requirements of this chapter.

32 (b) The State Fire Marshal shall, in consultation with relevant
33 state and local public agencies, the fireworks industry, and other
34 relevant stakeholders, develop, publish, and provide necessary
35 guidance and training to local agencies who seize, collect, transport,
36 store, and treat seized fireworks. This training and education may
37 include, but is not limited to, the following specific areas:

38 (1) Standards for the transportation, storage, and handling of
39 fireworks and pyrotechnic articles in accordance with Chapter 6
40 (commencing with Section 975) of Division 1 of Title 19 of the

California Code of Regulations and the National Fire Protection Association (NFPA) 1124: Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles of 2013.

(2) Recognition of explosive materials and isolation procedures in accordance with Chapter 10 (commencing with Section 1550) of Division 1 of Title 19 of the California Code of Regulations and the National Fire Protection Association (NFPA) 495: Explosive Materials Code of 2013.

(3) Recognition of commercial, consumer, and illegal fireworks in accordance with Chapter 6 (commencing with Section 975) of Division 1 of Title 19 of the California Code of Regulations and the National Fire Protection Association (NFPA) 1124: Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles of 2013.

~~(4) Environmental health standards for the management of hazardous waste pursuant to Division 4.5 (commencing with Section 66250) of Title 22 of the California Code of Regulations.~~

12559.4. The Department of Toxic Substances Control shall develop and publish guidelines for the implementation of this chapter that includes, but is not limited to, the following specific areas:

(a) Standards for the proper handling, transport, and storage of fireworks that are hazardous materials for the purposes of this chapter.

(b) Standards for the proper handling, transport, and disposal of fireworks that are hazardous waste.

(c) A determination of the type of facility that qualifies as a regional collection center.

(d) A definition of “commercially viable” for the purposes of this chapter that ensures that fireworks that should be disposed of as waste are not resold.

SEC. 3. Section 12599.5 is added to the Health and Safety Code, to read:

12599.5. (a) Notwithstanding Sections 12599 and 12672, the State Fire Marshal shall issue separate one-time retail licenses pursuant to this section that shall authorize the retail sale of safe and sane fireworks within this state only from 9 a.m. on December 26 to 11:59 p.m. on January 1 of the following year, inclusive. A license issued pursuant to this section shall be valid for only one

1 seven-day period and shall expire at the end of the period for which
2 it is valid. All fireworks sold pursuant to a license issued pursuant
3 to this section shall have been certified as safe and sane by the
4 State Fire Marshal on or before June 15 of the year in which the
5 validity of the license commences. No other license issued pursuant
6 to this chapter shall authorize the sale of fireworks during that
7 period.

8 (b) A retail license shall not be issued for the license period
9 authorized by this section unless the charter city, city, county, fire
10 district, or city and county having jurisdiction over the fixed
11 location where the fireworks would be sold adopts an ordinance
12 or resolution allowing that sale, and the application for that license
13 is received by the State Fire Marshal on or before December 15
14 of the year in which the validity of the license is to commence.
15 The ordinance or resolution authorizing the sale of those fireworks
16 may limit the period of use of those fireworks to specified days
17 and hours within the period during which the sale is authorized by
18 this section.

19 (c) This section shall become operative on January 1, 2015.

20 SEC. 4. Section 12635.5 is added to the Health and Safety
21 Code, to read:

22 12635.5. (a) A charter city, city, county, fire protection district,
23 or city and county that adopts an ordinance or resolution pursuant
24 to Section 12599 or 12599.5 may, through adoption of an ordinance
25 or resolution by the governing body, require each applicant
26 receiving a permit to pay a fee to the charter city, city, county, fire
27 district, or city and county of a pro rata portion of the actual and
28 reasonable costs the charter city, city, county, fire protection
29 district, or city and county incurs that is related to any of the
30 following:

- 31 (1) Processing and issuing permits.
- 32 (2) Inspection of fireworks stands.
- 33 (3) Public education and awareness campaigns regarding the
34 safe and responsible use of safe and sane fireworks, and the dangers
35 and risks posed by the use of illegal fireworks.
- 36 (4) Enforcing the provisions of the code of the charter city, city,
37 county, fire protection district, or city and county with respect to
38 the sale and use of safe and sane fireworks, including extra
39 personnel time and cleanup of the fireworks trash and debris. "Extra
40 personnel time" means employee or contracted employee time that

1 the charter city, city, county, fire protection district, or city and
2 county would not otherwise incur but for the sale and use of safe
3 and sane fireworks.

4 (5) Fire operation and suppression efforts that are directly related
5 to safe and sane fireworks.

6 (b) The pro rata share of the costs shall be specified in the
7 ordinance or resolution and calculated using gross sales as shown
8 on each permittee's sales and use tax return for the applicable
9 period. The pro rata share of costs shall not exceed 7 percent of
10 the gross sales of the fireworks sold in the charter city, city, county,
11 fire protection district, or city and county during the applicable
12 period. A cost recovery ordinance or resolution in effect on or
13 before January 1, 2015, may supersede this subdivision.

14 SEC. 5. Section 12726 of the Health and Safety Code is
15 amended to read:

16 12726. (a) The dangerous fireworks seized pursuant to this
17 part shall be disposed of by the State Fire Marshal in the manner
18 prescribed by the State Fire Marshal at any time after the final
19 determination of proceedings under Section 12724, or upon final
20 termination of proceedings under Section 12593, whichever is
21 later. If no proceedings are commenced pursuant to Section 12724,
22 the State Fire Marshal may dispose of the fireworks after all of the
23 following requirements are satisfied:

24 (1) A random sampling of the dangerous fireworks has been
25 taken, as defined by regulations adopted by the State Fire Marshal
26 pursuant to Section 12552.

27 (2) The analysis of the random sampling has been completed.

28 (3) Photographs have been taken of the dangerous fireworks to
29 be destroyed.

30 (4) The State Fire Marshal has given written approval for the
31 destruction of the dangerous fireworks. This approval shall specify
32 the total weight of the dangerous fireworks seized, the total weight
33 of the dangerous fireworks to be destroyed, and the total weight
34 of the dangerous fireworks not to be destroyed.

35 (b) To carry out the purposes of this section, the State Fire
36 Marshal shall acquire and use statewide mobile dangerous
37 fireworks destruction units to collect and destroy seized dangerous
38 fireworks from local and state agencies.

39 SEC. 6. Section 25174.7 of the Health and Safety Code is
40 amended to read:

1 25174.7. (a) The fees provided for in Sections 25174.1 and
2 25205.5 do not apply to any of the following:

3 (1) Hazardous wastes that result when a government agency,
4 or its contractor, removes or remedies a release of hazardous waste
5 in the state caused by another person.

6 (2) Hazardous wastes generated or disposed of by a public
7 agency operating a household hazardous waste collection facility
8 in the state pursuant to Article 10.8 (commencing with Section
9 25218), including, but not limited to, hazardous waste received
10 from conditionally exempt small quantity commercial generators,
11 authorized pursuant to Section 25218.3.

12 (3) Hazardous wastes generated or disposed of by local vector
13 control agencies which have entered into a cooperative agreement
14 pursuant to Section 116180 or by county agricultural
15 commissioners, if the hazardous wastes result from their control
16 or regulatory activities and if they comply with the requirements
17 of this chapter and regulations adopted pursuant thereto.

18 (4) Hazardous waste disposed of, or submitted for disposal or
19 treatment, by any person, which is discovered and separated from
20 solid waste as part of a load checking program.

21 (5) Hazardous waste that results from the seizure or destruction
22 of illegal fireworks by the State Fire Marshal or other authorized
23 government fire protection agency pursuant to Section 12721.

24 (b) Notwithstanding paragraph (1) of subdivision (a), any person
25 responsible for a release of hazardous waste, which has been
26 removed or remedied by a government agency, or its contractor,
27 shall pay the fee pursuant to Section 25174.1.

28 (c) Any person who acquires land for the sole purpose of
29 owner-occupied single-family residential use, and who acquires
30 that land without actual or constructive notice or knowledge that
31 there is a tank containing hazardous waste on or under that
32 property, is exempt from the fees imposed pursuant to Sections
33 25174.1 and 25205.5 in connection with the removal of the tank.

34 SEC. 7. Section 25205.3 of the Health and Safety Code is
35 amended to read:

36 25205.3. The following facilities are exempt from the fees
37 imposed by this article:

38 (a) Any household hazardous waste collection facility operated
39 pursuant to Article 10.8 (commencing with Section 25218).

1 (b) Any facility operated by a local government agency, or by
2 any person operating a hazardous waste collection program under
3 an agreement with a public agency, which is used for wastes which
4 meet the requirements of paragraph (3) of subdivision (a) of Section
5 25174.7.

6 (c) That portion of a solid waste facility permitted pursuant to
7 Chapter 3 (commencing with Section 44001) of Part 4 of Division
8 30 of the Public Resources Code, which is used for the segregation,
9 handling, and storage of hazardous waste separated from solid
10 waste loads received by the facility, pursuant to a load checking
11 program.

12 (d) A facility used solely for the treatment, storage, disposal,
13 or recycling of hazardous waste which results when a public agency
14 or its contractor investigates, removes, or remedies a release of
15 hazardous waste caused by another person.

16 (e) (1) A mobile fireworks treatment unit used by the Office
17 of the State Fire Marshal to destroy illegal fireworks pursuant to
18 Section 12721.

19 (2) A regional collection center for fireworks established
20 pursuant to Section 12559.

21 (f) (1) For purposes of fees assessed in any reporting period
22 beginning July 1, 1990, or subsequently, a facility that has been
23 issued a permit for the purpose of storing hazardous waste onsite,
24 and whose permit has expired, if all of the following has occurred:

25 (A) The facility has received no waste from offsite since the
26 permit expired.

27 (B) The owner or operator gave the department timely
28 notification of intent to close the facility, pursuant to regulations
29 adopted by the department.

30 (C) At least 90 days have elapsed since the owner or operator
31 gave the department that notification.

32 (D) The department did not complete its review of the closure
33 plan within 90 days of receiving the notification.

34 (2) This exclusion shall take effect the reporting period
35 following the reporting period in which the facility first satisfied
36 the requirements of paragraph (1) and did not accumulate waste
37 onsite for more than 90 consecutive days.

38 SEC. 8. Section 15301 of the Vehicle Code is amended to read:

39 15301. (a) The Department of Motor Vehicles, in conjunction
40 with the State Fire Marshal, shall develop regulations and

1 procedures to temporarily suspend the commercial motor vehicle
2 license of a person who is operating a commercial motor vehicle
3 while transporting dangerous fireworks having a gross weight of
4 10,000 pounds or more.

5 (b) A driver of a commercial motor vehicle shall not operate a
6 commercial motor vehicle for three years if the driver is convicted
7 of transporting dangerous fireworks having a gross weight of
8 10,000 pounds or more.

9 (c) This section shall not apply to a person who holds and is
10 operating within the scope of a valid license as described in Section
11 12516 of the Health and Safety Code or valid permit as described
12 in Section 12522 of the Health and Safety Code.

13 *SEC. 9. The provisions of this act are severable. If any*
14 *provision of this act or its application is held invalid pursuant to*
15 *the federal Resource Conservation and Recovery Act, that*
16 *invalidity shall not affect other provisions or applications that can*
17 *be given effect without the invalid provision or application.*

18 ~~SEC. 9.~~

19 *SEC. 10.* No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.